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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

CONSTANTIN STAN,

Defendant and Appellant.

B220821

(Los Angeles County  
Super. Ct. No. GA059127)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
Teri Schwartz, Judge. Appeal dismissed.

Robert Booher, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

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Constantin Stan demanded his girlfriend Angela Tyler accompany him at gunpoint to his apartment, where he forced her to remain against her will and threatened to kill her. Stan eventually returned Tyler to her residence, and she notified police. Officers searched Stan's residence and found four rifles, some ammunition and two knives.

Stan was charged by information with assault with a firearm (Pen. Code, § 245, subd. (a)(2),<sup>1</sup> count 1); making a criminal threat (§ 422, count 2); possession of a firearm by a felon, (§ 12021, subd. (a)(1), counts 3 and 6); kidnapping (§ 207, subd. (a), count 4); and false imprisonment by violence (§ 236, count 5). The information specially alleged firearm enhancements as to count 4 (§ 12022.53, subd. (b) & (e)(1)) and, as to counts 1 through 5 (§ 12022.5, subd. (a)(1)). It was further alleged Stan was subject to sentencing under the "Three Strike" law (§§ 667, subds. (b)-(i); 1170.12, subds. (a)-(d)).

Stan's motion to suppress evidence (§ 1538.5) was heard and denied. On the day of trial, Stan waived his right to a jury trial and entered a plea of no contest to assault with a firearm (count 1), and admitted the accompanying section 12022.5, subdivision (a)(1) firearm enhancement. At the time Stan entered his plea, he was advised of his constitutional rights and the nature and consequences of his plea. Stan stated he understood and waived his constitutional rights, acknowledged that he understood the consequences of his plea and admission and accepted the terms of the negotiated agreement.

The trial court found the plea was freely and voluntarily entered, and there was a factual basis for the plea. Defense counsel joined in the waivers of Stan's constitutional rights in the plea and stipulated to a factual basis of the plea pursuant to *People v. West* (1970) 3 Cal.3d 595. Stan's plea agreement called for him to be sentenced to an aggregate term of seven years in state prison. Against his counsel's advice, Stan agreed, as a *Cruz* waiver, that if he failed to appear for sentencing, the trial court could sentence him to up to 14 years in state prison. (*People v. Cruz* (1999) 44 Cal.3d 1247.)

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<sup>1</sup> Statutory references are to the Penal Code.

Defendant did not appear for sentencing, and the trial court ultimately sentenced him to an aggregate state prison term of 14 years (the four-year upper term for aggravated assault plus 10 years for the firearm enhancement.). Stan received presentence custody credit of 55 days (48 actual days and 7 days of conduct credit). The court ordered Stan to pay a \$30 security assessment, a \$30 criminal conviction assessment and a \$200 restitution fine. A parole revocation fine was imposed and suspended pursuant to section 1202.45. The remaining counts and special allegations were dismissed on the prosecutor's motion.

We appointed counsel to represent Stan on appeal. There is no certificate of probable cause in the record, but the notice of appeal "is based on the sentence or other matters occurring after the plea."<sup>2</sup>

After examination of the record counsel filed an opening brief in which no issues were raised. On July 20, 2010, we advised Stan he had 30 days within which to personally submit any contentions or issues he wished us to consider. On August 30, 2010, Stan filed a handwritten supplemental brief, attached to which is a handwritten statement, bearing the signature "Angela Tyler", a copy of Stan's criminal record, and a copy of a newspaper article. On September 10, 2010, Stan filed a second handwritten supplemental brief. In both supplemental briefs, Stan appears to be making claims of insufficient evidence, ineffective assistance of counsel, and prosecutorial and judicial misconduct.

We have examined the entire record and are satisfied Stan's attorney has fully complied with the responsibilities of counsel and no arguable issues exist. (*Smith v. Robbins* (2000) 528 U.S. 259, 277-284 [120 S.Ct. 746, 145 L.Ed.2d 756]; *People v. Kelly* (2006) 40 Cal.4th 106; *People v. Wende* (1979) 25 Cal.3d 436, 441.)

A criminal defendant who appeals following a plea of no contest or

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<sup>2</sup> Stan did not check the box on the preprinted notice of appeal, indicating he was challenging the denial of his motion to suppress evidence under section 1538.5.

guilty without a certificate of probable cause can only challenge the denial of a motion to suppress evidence or raise grounds arising after the entry of the plea that do not affect its validity. (Cal. Rules of Court, rule 8.304(b).) In the absence of a certificate of probable cause, because Stan is attacking the validity of his plea by challenging his sentence as well as the sufficiency of evidence, his notice of appeal is inoperative. The appeal must be dismissed. (Pen. Code, § 1237.5; see *People v. Shelton* (2006) 37 Cal.4th 759, 769-771; *People v. Panizzon* (1996) 13 Cal.4th 68, 79.)

Moreover, the record provides no support for Stan's assertion defense counsel provided ineffective assistance at any time during the proceedings. (*Strickland v. Washington* (1984) 466 U.S. 668, 686 [104 S.Ct. 2052, 80 L.Ed.2d 674].) To the extent this assertion is based on matters outside the record, it is more appropriately decided in a habeas corpus proceeding where all relevant facts can be developed. (*People v. Avena* (1996) 13 Cal.4th 394, 419.)

The appeal is dismissed.

ZELON, J.

We concur:

PERLUSS, P. J.

JACKSON, J.